Attachment B – United States' and Walker River Paiute Tribe's Statement of Undisputed Material Facts in Support of Plaintiffs' Joint Motion for Partial Summary Judgment

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Pursuant to Rule 56(c)(1), Fed. R. Civ. P., and D. Nev. LR 56-1, the United States and the Walker River Paiute Tribe ("Tribe") assert the following undisputed material facts in support of their Joint Motion for Partial Summary Judgment:

1. The only claim litigated in the first phase of this case was the Tribe's surface water right to irrigate 10,000 acres of the Walker River Indian Reservation (" Reservation") within the Reservation's permanent boundaries, as they existed in 1924, from the direct, uninterrupted, natural flows of the Walker River. *See United States v. Walker River Irrigation District*, 11 F. Supp. 158, 159, 162–63 (D. Nev. 1935) ("*Walker I*"); Transcript of Record Upon Appeal from the District Court of the United States for the District of Nevada, at 3–243, 335–493, *United States v. Walker River Irrigation Dist.* ("*Walker I*"), 11 F. Supp. 158, 162 (D. Nev. 1935) (No. 8779) ("App. R.") (Exhibit 2).

2. The district court record in *Walker I* and stipulations by the parties following trial show that the Tribe's storage right to Weber Reservoir has not been litigated.
   a. On-reservation storage rights were not raised in the United States' complaint, Defendants' answers, or the subsequent briefs of the parties. *See* App. R. at 3–243, 335–493 (Exhibit 2).

   b. Evidence of on-reservation storage was placed at issue only through testimony elicited by Defendants on the hypothetical augmentation of the Tribe's surface right to irrigate beyond the 1,900 acres Defendants proposed, not for the purpose of quantifying an independent storage right. *See*, *e.g.*, App. R. at 859, 1452–55,1484–86 (Exhibit 2).

   c. To defeat the United States' 150 cfs water right claim and to justify its contention that the Tribe was entitled to enough water to irrigate only around 1,900 acres at that time, the Walker River Irrigation District ("WRID") tried to show that a reservoir could supply all the Tribe's irrigation needs, up to the 10,000 acres claimed, *if* the tribe later put the land to beneficial use. *See* App. R. at 680–746, 809–961 (Exhibit 2).

   d. Defendants were aware that on-reservation storage was not before the Court and unsuccessfully attempted to stipulate to the funding of Weber Reservoir's construction in 1933. Letter from W. M. Kearney, attorney for WRID, to Ethelbert Ward, Special Assistant Attorney General (Jan. 12, 1934) (Exhibit 7); Letter from W. M. Kearney to Ethelbert Ward (Sept. 12, 1934) (Exhibit 8).

e. The Special Master recognized the possibility of the existence of a storage right, and in his Findings of Fact, the Special Master recognized the United States' ongoing study of storage right possibilities to "augment" the Tribe's surface water irrigation right. App. R. at 503 (Exhibit 2).

f. The Special Master never issued findings of fact concerning the quantity or impact of eventual on-reservation storage. *See* App. R. at 244–334, 361–490 (Exhibit 2).

g. The Court included no analysis of an on-reservation storage rights in its opinion. *See Walker I*, 11 F. Supp. 158.

h. Like the Special Master, the District Court recognized that reservoir storage on the Reservation remained a possibility acknowledging that "[t]he [United States'/Tribe's] water problem at the reservation might be solved by accepting and acting upon the recommendations of its engineers" to construct a reservoir. *Walker I*, 11 F. Supp. at 165.

i. After remand from the Ninth Circuit Court of Appeals, all parties recognized the existence and unresolved nature of the Tribe's storage right, and by joint stipulation, added the phrase "as of the 14th day of April, 1936" to Paragraph XII of the Decree in order to preserve the right with a set priority date. *See* Letter from Roy W. Stoddard to the Attorney General (Nov. 24, 1939) (Exhibit 10); Letter from Oscar L. Chapman to theAttorney General (Nov. 1, 1939) (Exhibit 11); Letter from Roy W. Stoddard to the Attorney General (Jan. 11, 1940) (Exhibit 12); Letter from Norman M. Littell to Roy Stoddard (Jan. 22, 1940) (Exhibit 13); 1936 Decree ¶ XII *as amended by* 1940 Amendments at 3.

3. The district court record in *Walker I* and this Court's 1994 Order show that the Tribe's groundwater rights have not been litigated.

a. The *Walker I* litigation did not, at any time, discuss the use of groundwater on the Reservation. *See* App. R. (Exhibit 2)

b. This Court has already concluded that from its origins through the 1990's this litigation did not "concern itself in any way with underground water rights." *Order* at 3 (July 8, 1994) ("1994 Order") (ECF No. 30).

4. The district court record in *Walker I* shows that the Tribe's surface water rights to lands added to the Reservation in 1928, 1936, and 1972 have not been litigated.

a. When the United States filed its claim in 1924, the Reservation consisted of 86,000 acres, 10,000 of which the United States claimed were irrigable. *See*

Proclamation of Sept. 26, 1906, 34 Stat. 3237; Exec. Order No. 2820 (Mar. 15, 1918); App. R. at 16–17, 477–79. (Exhibit 2).

b. The litigation did not, at any time, discuss Reservation lands beyond the 86,000 acres in the original claim. *See* App. R (Exhibit 2).